

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

ARCTIC GLACIER, INC.

Employer

and

Case 4–RC–21064

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS LOCAL UNION NO. 830

Petitioner

**REGIONAL DIRECTOR’S DECISION AND
DIRECTION OF ELECTION**

The Employer, Arctic Glacier, Inc., is engaged in the production and distribution of packaged ice at its facility in Twin Oaks, Pennsylvania (herein called the Facility). The Employer operates the Facility using a core group of about 54 to 56 employees who work all year and supplements this work force by hiring about 80 seasonal employees during its peak summer months. The Petitioner, International Brotherhood of Teamsters Local Union No. 830, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of all of the Employer’s current full-time and regular part-time employees.¹ The Employer contends that the seasonal employees should be included in the unit and that the election should therefore be delayed until June or July 2006, when the Facility next reaches its peak complement of employees. The Petitioner would exclude the seasonal employees as having no reasonable expectation of reemployment and contends that the election should not be delayed.

A Hearing Officer of the Board held a hearing, and the parties filed briefs. I have considered the evidence and the arguments presented by the parties concerning the issues of whether the seasonal employees should be included in the unit and whether the election should be delayed until next summer. As discussed below, I have concluded that the seasonal employees do not have a reasonable expectation of future employment. Accordingly, I have directed an election to be conducted without delay.

¹ The classifications of employees at the Facility include Drivers, Helpers, Production Operators, Loaders, Stackers, Truck Mechanic, Maintenance employees, Merchandiser Repair employee, Truck Maintenance employee, and Refrigerator Maintenance employees. The Employer agrees that these classifications should all be included in the unit.

In this Decision, I will first review the factors that must be evaluated in determining whether seasonal employees have a reasonable expectation of future employment. Then, I will present in detail the facts and reasoning that support my conclusion.

I. RELEVANT CASE LAW

In deciding the status of seasonal employees, the Board assesses their reasonable expectation of future employment. Factors which the Board considers in assessing this expectation include: (1) the size of the area labor force from which the seasonal employees are recruited; (2) the stability of the employer's labor requirements and the extent to which the employer is dependent upon seasonal labor; (3) the actual season-to-season reemployment of the seasonal employees; and (4) the employer's preference or recall policy regarding reemployment of seasonal employees. *Macy's East*, 327 NLRB 73 (1998); *L & B Cooling*, 267 NLRB 1, 2-3 (1983), *enfd.* 757 F. 2d 236 (10th Cir. 1985); *Maine Apple Growers*, 254 NLRB 501, 502-503 (1981). Where an employer operates year-round with peak seasons, the Board refers to those employees hired for the peak season as "seasonal employees." See *Baumer Foods*, 190 NLRB 690 (1971).² The Board's policy is that unit placement and voting eligibility are inseparable issues; any employee who may be represented as the result of an election has the right to vote in the election. *Post Houses*, 161 NLRB 1159, 1172-1173 (1966), *enfd.* 384 F.2d 463 (3rd Cir. 1967); *Sears, Roebuck & Co.*, 112 NLRB 559, 569 fn. 28 (1955).

In determining when to conduct an election where an employer supplements its work force each year with seasonal employees, the Board must balance the goals of ensuring maximum employee participation in the election and permitting current employees to have representation as quickly as possible. *Saltwater, Inc.*, 324 NLRB 343, 344 (1997); *Elsa Canning Co.*, 154 NLRB 1810, 1812 (1965). See also *Bituma Corp. v. NLRB*, 23 F.3rd 1432 (8th Cir. 1994), *enforcing* 310 NLRB No. 167 (1993). If an employer, despite hiring some employees seasonally, is engaged in virtually year-round operations, and the number of employees in the year-round complement is relatively substantial, the Board will direct an immediate election so as not to hamper year-round employees unduly in the exercise of their statutory rights. *The Baugh Chemical Company*, 150 NLRB 1034 (1965). In seasonal industries, the Board has sometimes directed that elections be delayed until the employer's peak season. See *Millbrook, Inc.*, 204 NLRB 1148, 1149 (1973); *Kelly Brothers Nurseries, Inc.*, 140 NLRB 82, 86-87 (1962); *Brooksville Citrus Growers Association*, 112 NLRB 707, 710 (1955). In such cases, the employer's business has often been related to agricultural growing seasons.

² See also *The Zoological Society of Philadelphia*, Case 4-RC-2025 (2001). In that case, the Employer operated on a year-round basis and had a peak summer season in which it significantly expanded its work force. In an unpublished Order denying review of the Regional Director's Decision to include the peak season employees in the unit, the Board stated that where an employer "operates year round with peak seasons, those hired for the peak season are properly characterized as 'seasonal employees.'" The Board then applied the factors set forth herein for assessing those employees' expectation of future employment.

II. FACTS

In October 2003, the Employer purchased the Facility, which was previously owned and operated by Brandywine Ice Company. The Facility has three buildings, which house administrative offices, production space, a small sales section, a refrigeration repair shop, and a mechanics' garage. The Facility is located about 19 miles from Philadelphia and a few miles from the Delaware border. The Employer's customers include convenience stores, supermarkets, and beer distributors in Pennsylvania, Delaware, New Jersey, and Maryland.

The Employer generates about 75 percent of its average annual sales revenue of \$10 million, or \$7.5 million, between May 15 and Labor Day. Production and sales of ice are about five to six times greater during the Employer's summer peak season than in the winter. June and July are the Employer's busiest months. During the summer, the Facility operates 24 hours a day six days a week, and 16 hours on Sunday. During the winter, the Facility operates eight hours a day, five days a week. The Employer ordinarily ceases production for about a month during January and February and performs maintenance work during this time.

The Employer hires seasonal employees for the same period each year, from mid-May through Labor Day. During this period, the work force roughly doubles each year. At the height of the 2005 peak season, the Employer had 130 to 135 unit employees. The Employer employed 115 employees on the day of the hearing, August 31, 2005, and expected the number to decrease consistently throughout the fall. Thus, the Employer anticipated having 75 to 80 unit employees by the end of September, 60 to 65 by the end of October, and 54 to 56 in November and throughout the winter.

With respect to specific classifications, the Employer employs about 45 Drivers during the summer and about 12 Drivers during the winter, 45 Helpers in the summer and 4 Helpers in the winter, 10 to 15 Operators in the summer and 2 Operators in the winter, and about 9 Stackers in the summer but no Stackers in the winter. There is an increased demand for the Employer's products during major holidays in the fall and winter, but the Employer does not hire extra employees for these time periods.

The Employer hires its summer employees primarily by running newspaper advertisements. The Employer's Regional Manager, Mary Katherine Stack-Barth, testified that the Employer normally places these advertisements in the same newspapers each year, but she did not indicate the identity of these newspapers or the areas that these newspapers serve or whether the seasonal employees reside in, or come from, a geographical area proximate to the Employer's operations. This year, the Employer also ran advertisements in an unidentified Delaware newspaper and the *Philadelphia Inquirer*, a major regional newspaper. In addition to placing advertisements in newspapers, the Employer depends on "word of mouth" to fill some positions.

Seasonal employees are told that they are only hired for the summer months.³ If they attempt to return in subsequent years, they need to reapply. In fact, they are seldom rehired after they are laid off; only one seasonal unit employee, a Driver, has returned to work for the Employer in a later peak season.⁴ The Employer does not maintain a recall list for seasonal employees and does not have a practice of contacting seasonal employees from prior years to return. The Employer maintains records of seasonal employees but does not generally use them for rehiring employees, although on occasion the Employer may contact one or two Drivers requesting them to return.

Some seasonal employees who do a good job are given an opportunity to become year-round employees. Since the 2004 peak season, five seasonal employees have converted to year-round employment, and the Employer anticipates keeping six or seven employees from this year's seasonal contingent as core employees.

The Employer's seasonal employees work in the same classifications and start at the same base pay rate as core employees, but core employees are likely to have higher wages than seasonal employees in the same classifications because of additional wage increases they received over the years. All employees, whether year-round or seasonal, are commonly supervised. Seasonal employees accrue vacation and sick time. They also receive health insurance, but only after they have worked for the Employer for 90 days, and many of them do not work for the Employer that long.

III. ANALYSIS

A. Application of the factors for determining the eligibility of seasonal employees

In determining whether the Employer's summer employees have an expectation of reemployment in future years, the following factors require analysis.⁵

³ Stack-Barth testified that seasonal employees are "more than welcome to return" but there is no evidence that the Employer informs the unit employees of this fact. She tells non-unit administrative employees, whom she personally hires, that they are welcome to return, but she has no such discussions with unit employees.

⁴ That employee, Don Blair, has worked at the Facility for five summers, both for the Employer and Brandywine Ice Company. Additionally, an administrative employee of the Employer has returned for several summers.

⁵ The Petitioner contends that the Employer's operations are not seasonal because the Employer operates essentially on a year-round basis. The record is clear, however, that the Employer's year-round operation is punctuated by one significant peak season in which its employee complement grows significantly. The Board has characterized such businesses as seasonal. *Diamond Walnut Growers*, 316 NLRB 36 (1995), enforcement denied on other grounds, 80 F. 3rd 485 (9th Cir. 1996); *Dick Kelchner Excavating Co.*, 236 NLRB 1414 (1978).

Size of the Recruitment Area Labor Pool

The Employer contends that its seasonal employees are annually hired from the same local geographic area, but the record does not support this contention. The record shows only that the Employer places advertisements in the same unspecified newspapers each year and in 2005 also advertised in the *Philadelphia Inquirer* and a Delaware newspaper. This year the Employer sought employees from a wide region, a labor pool consisting of the greater Philadelphia area and Delaware. Moreover, the record does not indicate the geographical area covered by the other newspapers utilized by the Employer nor if the geographic area in which the employees reside, or come from, is proximate to the Employer's operations. Therefore, I find that this factor militates against a finding that the seasonal employees have a reasonable expectation of future employment. See *United Telecontrol Electronics, Inc.*, 239 NLRB 1057 (1978).

The Employer's Labor Requirements and Dependency on Seasonal Labor

The Employer's demand for seasonal labor in the summer months is consistent, definite, and sizeable. Each year, because of the increased demand for ice in summer, the Employer needs to hire a large seasonal work force. This factor therefore supports a conclusion that the seasonal employees have a reasonable expectation of future employment. See *California Vegetable Concentrates*, 137 NLRB 1779, 1781 (1962).

Actual Season-to-Season Reemployment

The Employer's reemployment of summer employees in subsequent years is minimal. Only one out of the approximately 80 seasonal employees in 2005 had previously been employed by the Employer. The Employer contends that its history of low seasonal reemployment levels is partly explained by the significant number of seasonal employees that become year-round employees. The record does not support that assertion, however, as only five seasonal employees have become year-round employees. Therefore, I find that this factor does not support a conclusion that the seasonal employees have a reasonable expectation of future employment. See *United Telecontrols Electronics, Inc.*, above; *Maine Sugar Industries*, 169 NLRB 186 (1968).

The Employer's Recall and Preference Policies

The Employer does not maintain a recall list and seldom recruits former seasonal employees. While the Employer maintains records of seasonal employees, it does not generally use this list for rehiring, and the Employer requires former seasonal employees to reapply for work. I find that this factor militates against finding that the seasonal employees have a reasonable expectation of future employment. See *Macy's East*, 327 NLRB 73 (1998); *L & B Cooling*, 267 NLRB 1, 2-3 (1983), *enfd.* 757 F. 2d 236 (10th Cir. 1985).

B. Discussion and Summary

Three of the four factors used to determine the status of seasonal employees favor a finding that these employees do not have a reasonable expectation of recall. The Employer recruits from a major metropolitan area, does not have a policy of recalling seasonal employees from year to year, and has actually reemployed only one unit employee. The sole factor to the contrary is that the Employer has a consistent need for seasonal employees each year. However, the record demonstrates that the Employer does not meet this need by attempting to reemploy the same seasonal employees but hires new seasonal employees each year.⁶ Thus, the Employer's seasonal employees have minimal expectations of reemployment. Rather, they are temporary or irregular employees without sufficient interests in common with the Employer's other employees to be included in the unit. Accordingly, I shall exclude the seasonal employees from the unit. See *Macy's East*, above; *Freeman Loader Corp.*, 127 NLRB 514, 515 (1960). As only the Employer's year-round employees are in the unit, there is no reason to delay the election, and an election shall be held within the Board's normal time frame.

IV. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and for the reasons set forth above, I conclude and find as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

⁶ *Maine Apple Growers*, 254 NLRB 501 (1984), cited by the Employer, does not warrant a contrary conclusion. In that case, the Board found that seasonal employees had a reasonable expectation of future employment although the employer did not initiate the rehire of employees who had worked during the previous season and were laid off. The Board stated that in order to sustain a finding of reasonable expectation of future employment, if "other factors" are favorable the record need establish only that the seasonal employees are permitted to reapply the next season and that some of them are in fact rehired. In *Maine Apple Growers*, the other factors showed that the employer drew its seasonal employee contingent from a very small labor pool and rehired a substantial number of prior employees each season. In this case, in contrast, the Employer has not rehired employees from year to year and draws from a far larger pool.

All full-time and regular part-time Drivers, Helpers, Production Operators, Loaders, Stackers, Maintenance employees, Truck Mechanic, Merchandiser Repair employee, Truck Maintenance employee, and Refrigerator Maintenance employees employed by the Employer at its facility in Twin Oaks, Pennsylvania, **excluding** all seasonal employees, office clerical employees, guards, and supervisors as defined by the Act.

V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for the purposes of collective bargaining by **International Brotherhood of Teamsters Local Union No. 830**. The date, time, and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

A. Eligible Voters

The eligible voters shall be unit employees employed during the designated payroll period for eligibility, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike, which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are: 1) employees who have quit or been discharged for cause after the designated payroll period for eligibility; 2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date; and 3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the **full** names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized

(overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106 on or before **October 3, 2005**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (215) 597-7658, or by E-mail to Region4@NLRB.gov.⁷ Since the list will be made available to all parties to the election, please furnish a total of two (2) copies, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. A request for review may also be submitted by E-mail. For details on how to file a request for review by E-mail, see <http://gpea.NLRB.gov/>. This request must be received by the Board in Washington by 5:00 p.m., EDT on **October 11, 2005**.

Signed: September 26, 2005

at Philadelphia, Pennsylvania

/s/ [Dorothy L. Moore-Duncan]
DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four

⁷ See OM 05-30, dated January 12, 2005, for a detailed explanation of requirements which must be met when electronically submitting representation case documents to the Board, or to a Region's electronic mailbox. OM 05-30 is available on the Agency's website at www.nlr.gov.